

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In the Matter of Protest of:

CASE No. 2010 - 142

Team Clean, Inc.

POSTING DATE: December 17, 2010

Medical University of South Carolina

IFB No. IFB #4804-10/25/10-9436-I

MAILING DATE: December 17, 2010

Automatic Teller Machine Services

Pursuant to Section 11-35-4210(1)(b) of the South Carolina Consolidated Procurement Code (Code), this matter comes before the Chief Procurement Officer (CPO) by way of a timely letter of protest from Team Clean, Inc. (Team Clean). With this invitation for bids (IFB), the Medical University of South Carolina (MUSC) attempts to procure services for placement and management of automatic teller machines (ATMs) for the MUSC campus. Bidders were asked to offer to pay MUSC a specific transaction fee for each ATM transaction conducted on the MUSC campus. After evaluating the bids received, MUSC posted a statement of award to CalTel, Inc. (CTI).

In its protest, Team Clean alleged, “During the sealed bid opening at 3pm on the 25th of October there were 2 bids, ours and one that was later deemed non responsive. . . . On the following Monday we received an email thanking us for our interest in MUSC and an attachment with the statement of award.”¹ The Statement of Award went to CTI, a third bidder. According to Team Clean, the bid of CTI should be rejected because MUSC did not open it during the bid opening.

MUSC acknowledges that CTI's bid was overlooked and was not taken to the bid opening. However, MUSC argued that CTI's bid was received before the bid opening, and therefore it cannot be rejected.

¹ The bid that was later determined to be nonresponsive was from the South Carolina Federal Credit Union.

In order to resolve the matter, the CPO conducted a hearing on December 8, 2010. Appearing before the CPO were Team Clean, represented by owner Mike Lowery; Greg Graham on behalf of CTI; and MUSC, represented by Rosalind Giddens, Lead Procurement Officer.

NATURE OF PROTEST

The letter of protest, along with MUSC's Memorandum in response, are attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On September 29, 2010, MUSC issued an IFB. [Ex. 1]
2. MUSC issued Amendment One on October 14, 2010. [Ex. 2]
3. On October 25, 2010, MUSC held the bid opening. [Ex. 4]
4. MUSC issued a Statement of Award to CTI on November 1, 2010. [Ex. 6]

CONCLUSIONS OF LAW

Team Clean protests the procurement process and contends that the bid from CTI was improperly handled by MUSC and thus should be rejected. The CPO finds that this protest must be denied for the reason stated below.

Regulation 19-445.2070 specifies the conditions under which individual bids may be rejected. However, Regulation 19-445.2070(G) creates an exception to the rejection procedures stating,

Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived,

shall be rejected **unless** the bid had been delivered to the location specified in the solicitation or the governmental bodies' mail room which serves that location prior to the bid opening. (Emphasis added.)

Here, the testimony reflects that the bid was delivered to MUSC at the location specified in the solicitation before the time set for bid opening. Specifically, Greg Graham from CTI testified that he hand-delivered the bid to MUSC at the address indicated on the IFB on October 22, 2010. Gloria Rivera, MUSC's bid opening officer, testified that she personally received a bid from CTI on October 22, 2010, time-stamped it, and placed it in her locked filing cabinet. [Ex. 7] She explained that she laid CTI's bid flat due to its size rather than in the designated file folder. Ms. Rivera further explained that Vertelle Seabrook and Belinda Brown in MUSC's Purchasing Department conducted the bid opening for her after she was called to a last minute meeting. Chad Weisner of Team Clean testified that he was present at the bid opening on October 25, 2010, and that MUSC had only opened the bids of Team Clean and South Carolina Federal Credit Union (SCFCU) at the bid opening, and was unaware of CTI's bid. Ms. Rivera testified that she realized CTI's bid had been overlooked on November 1, 2010, and immediately took it to Cheryl Wolfe, MUSC's procurement officer. Ms. Wolfe testified that she therefore included CTI's bid in the evaluation process, along with Team Clean's bid, and ultimately issued an award to CTI.²

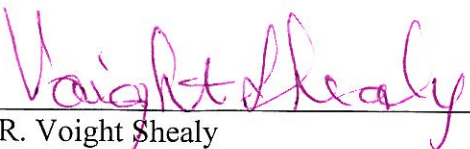
Mr. Lowery of Team Clean argued that he did not doubt that CTI's bid was submitted to MUSC before the deadline. However, he alleged that MUSC mishandled CTI's bid and therefore CTI's bid should be ignored by the State due to MUSC's omission of the CTI bid at the bid opening. The CPO disagrees since rejection of a bid in the possession of the State at the time of bid opening is specifically

² Ms. Wolfe explained that SCFCU's bid was declared nonresponsive.

prohibited by the regulations. Based on the evidence presented and Regulation 19-445.2070(G), the CPO therefore finds that MUSC properly accepted CTI's bid. Accordingly, the protest is denied.³

DETERMINATION

For the aforementioned reasons, the protest is denied.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services



Date

Columbia, S.C.

³ As an aside, Betty Sandifer, MUSC's Director of Division of Financing, Purchasing and Accounts Payable, also testified regarding a procedure that MUSC has implemented to avoid such a situation in the future. Specifically, Ms. Sandifer stated that MUSC was reinstating a previous procedure requiring that each bid received be listed on a bid sheet, which would be used to verify all bids that were received before bid opening. The CPO concurs with the proposed corrective action.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised October 2010)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2010 S.C. Act No. 291, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

Shealy, Voight

From: Mike Lowery [Mike@pacelabels.com]
Sent: Tuesday, November 09, 2010 10:02 AM
To: Shealy, Voight
Subject: RE: IFB #4804-10/25/10-9436-I

Mr. Shealy,

I would like you to log this matter as a protest for the reasons we discussed on the telephone on Monday, the 8th of November. My main reason for concern is the total way this sealed public bid opening was mishandled. There were two bids submitted and our bid was the only responsive bid that was submitted for the 3pm sealed bid opening on October 25th. The "lost" bid was discovered not hours or a few days later but a full week later. There are reason for the procedures that you use when handling a public sealed bid, you know them better than me, but I would think they are their to protect me and just as important, you. There would be no reason for my company to feel wronged if these procedures were followed and because they were not followed, you cannot rule out misconduct. We feel the bid should be awarded to Team Services.

thanks

mike lowery

864-420-5410

On Mon, 8 Nov 2010 14:15:29 -0500, "Shealy, Voight" <VShealy@mmo.sc.gov> wrote:

Mike,

Would you like me to log this matter as a protest?

Voight Shealy

11/23/2010

From: Mike Lowery [mailto:Mike@pacelabels.com]
Sent: Wednesday, November 03, 2010 5:09 PM
To: Shealy, Voight
Subject: IFB #4804-10/25/10-9436-I

Mr. Shealy,

My company, Team Clean Inc, submitted a bid for ATMs at MUSC, IFB #4804-10/25/10-9436-I. During the sealed bid opening at 3pm on the 25th of October there were 2 bids, ours and one that was later deemed non responsive. On Wednesday of that week we received a request for references that we supplied. On the following Monday we received an email thanking us for our interest in MUSC and an attachment with the statement of award. Also, in the email was several excuses as to why a bid was found one week after the October 25th 3pm bid deadline and that the bid was going to that company.

On Tuesday, I telephoned the director, Betty Sandifer. She was well aware of the situation and apologized several times and offered up details of the failed bid opening. I found Ms. Sandifer very professional and honest. I told her that I felt let down by the way it was handled and I believed we should be awarded the contract. I followed the rules. The company that received the bid might have followed the rules but because of the MUSC procurement office their bid was misplaced, lost, but definitely mishandled. Who knows and that's the point. I think that is why you have the rules in place that you do, so there is no question of misconduct and in this case who knows. I told Ms, Sandifer that I would summarize our conversation in an email and we would discuss it further after she had time to look into.

Within 10 minutes I received a phone call from Cheryl Wolfe. I didnot call her. I didnot ask for her to call me. She opens the conversation by questioning me about calling Betty Sandifer. She informed me than any questions concerning this bid should be directed to her. She offered up the same excuses as Ms. Sandifer and I told her how I felt and believed my company had been let down by the botched handling of bid opening. I was told that my company was not harmed because we had never been awarded the bid. I disagreed. She was very aggressive in her conversation and so was I. Again I didnot solicit this phone call nor did I want it. Ms. Wolfe informed me that my only recourse was to file a protest with your office and it would be denied. Before the conversation ended she told me again to file a protest and repeated it would be denied, that she had worked in the Columbia office and would see to it that my company wouldnot be able to bid on state jobs based on unfounded protest. I placed her on speaker phone and ask her to repeat her comment so my partner and receptionist could hear and she hung up the phone.

I'm glad we attended the bid opening. Not sure how this would have been handled. I can't believe procedure was followed. And after being told by Ms. Sandifer that this had never happened in her many years of service and how bad they felt, I can't believe that I have no bases for concern and shouldnot feel wronged.

I'm asking for your help and advice. A phone call would be appreciated.

11/23/2010

thanks

mike lowery

864-420-5410

WRITTEN DETERMINATION / MEMORANDUM TO FILE

Date: November 1, 2010

From: Cheryl Wolfe, Procurement Officer

Subj: Inclusion of Bid from CTI for Award Consideration

MUSC Invitation For Bid 4804-10/25/10-9436-I opened Monday, October 25, 2010, 3:00 pm in Harborview Office Towers. Present at the opening was: Chad Weisner/Team Clean, Inc.; Vertelle Seabrook, MUSC Purchasing; and Belinda Brown, MUSC Purchasing. Gloria Rivera, Bid Opening Officer and Cheryl Wolfe, Procurement Officer, were called to an Emergency Meeting at 2:30 pm, OCIO, Rm 202 and were not present at the opening.

Two bids were opened: Team Clean and SC Federal Credit Union. The unit pricing for Team Clean was read; the pricing for the SC Federal Credit Union was not read. Vertelle Seabrook who opened the bids indicated there were problems with the bid and refused to read the pricing. Chad Weisner would not leave until Cheryl Wolfe left the meeting she was in to talk to him. Chad asked about the bid from the Credit Union. I told him, after a quick look through the bid package, there were problems with it that caused the Bid Officer to not be able to determine the price (wrong VIII Bid Schedule was used) and I would have to refer to the SC Procurement Code to verify whether my next step was to consider this a Minor Informality (11-35-1520) to be corrected or as the bidder being Non-Responsive (19-445.2070). He stated that he has been to many bid openings and "this is not the way Clemson does business" to which I replied that this is MUSC not Clemson, but we still follow the same procurement code. The result was that on October 27, 2010, SC Federal Credit Union was deemed non-responsive because they did not use the revised VIII. Bid Schedule from Amendment 1 which was marked MANDATORY USE. Chad Weisner left the meeting on October 25th with the assumption Team Clean was the awardee even though there was no official notification or even mention of award.

Cheryl Wolfe proceeded with the evaluation of bids and to perform a responsive, responsible check on Team Clean. SC Federal Credit Union's pricing (an estimate since the wrong bid schedule was used) was originally included in the evaluation for a price reasonableness check only.

On Monday, November 1, 2010 at 8:00 am, Gloria Rivera brought to the attention of Cheryl Wolfe a bid from CTI, Inc. for the ATM Services solicitation had been received on October 22, 2010 at 12:39 PM and overlooked at the bid opening because it was put in front of the bid file the other bids were in because of its size. Because Gloria Rivera was called to a meeting at the last minute and Vertelle Seabrook offered to fill-in for her as the Bid Opening Officer, the bid Gloria in front of the file where all the other bids were located was not included in the public bid opening on October 25, 2010. The

determination by the Procurement Officer to include the overlooked bid from CTI, Inc. was in accordance with 19-445.2070. Rejection of Individual Bids, G. Exceptions to Rejection Procedures which states "Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the location specified in the solicitation or the governmental bodies' mail room which services that location prior to the bid opening". Since the CTI, Inc. bid was delivered to the correct location prior to the stated bid opening, it was considered in the evaluation and award process.

The MUSC procedure in accordance with the SC Procurement Code and Regulations set forth in 19-445.2045. Receipt and Safeguarding of Bids, A. Procedures Prior to Bid Opening, for Gloria Rivera/MUSC Bid Opening Officer is to accept bids (mailed or walked in), date/time stamp them as being received in the Procurement Office, then file then in a secure container until the established bid opening date and time where she proceeds to publicly open them with witnesses present. Procurement Officers are not allowed to view or handle any bids prior to that time.

Award of the ATM Services had not been made prior to the discovery of the overlooked bid. The bid from CTI, Inc. had been received on time and complied with all material aspects of the solicitation so it was considered in the evaluation process as stated above. Neither CTI, Inc. nor Team Clean certified as minority businesses. Team Clean did not request any preferences by Line Item although they did check on page 2 that their "In-State Office Address same as Home Office Address" but checked "no" on each of the three Line Item Preference responses. CTI, Inc. checked page 2 that their "In-State Office Address same as Home Office Address" plus checked "yes" on each of the three Line Item SC Resident Vendor Preferences responses. References were checked for both Team Clean and CTI – both were highly rated. Neither company appeared on the South Carolina Debarred Listing (SC.gov) or the Federal Government Listing (www.epls.gov).

Unit pricing for the bidders was evaluated:

1. Team Clean, Inc. offered \$0.80 per transaction fee. Based on the historical data presented as annual estimated quantities, MUSC would potentially receive \$1,920.00 annually for Harper Student Center (LOT I), \$6,720.00 annually for Harborview Office Tower Lobby (LOT II), and \$4,800.00 annually for the Student Library/Colbert Bldg (LOT III). The total annual potential revenue for MUSC: \$13,440.00.

2. CTI, Inc. offered \$1.10 per transaction fee. Based on the historical data presented as annual estimated quantities, MUSC would potentially receive \$2,640.00 annually for Harper Student Center (LOT I), \$9,240.00 annually for Harborview Office Tower Lobby (LOT II), and \$6,600.00 annually for the Student Library/Colbert Bldg (LOT III). The total annual potential revenue for MUSC: \$18,480.00.

Since all bids were submitted in a timely manner in accordance with the SC Procurement Code and Regulations, it was decided by the undersigned that including all responsive, responsible offers received – Team Clean, Inc. and CTI, Inc. – was in the best interest of the Medical University of South Carolina and the State of South Carolina plus fostered competition from more than one responsive, responsible source.

On November 1, 2010, an e-mail was sent to CTI, Inc. forwarding the Statement of Award to CTI, Inc. An e-mail was sent to Team Clean with the Statement of Award, a copy of the CTI bid packaging with the date stamp on it along with a note from Cheryl Wolfe of actions that took place.

Cheryl Wolfe
Procurement Manager
MUSC University Purchasing